



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2010 REGULAR SESSION

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SENATE BILL NO. 132

AS ENACTED

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MONDAY, MARCH 29, 2010

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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to school facilities and making an appropriation therefor.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

1        ➔ SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO  
2 READ AS FOLLOWS:

3        *It is the intent of Sections 1 and 2 of this Act to:*

- 4        *(1) Support the construction of new school buildings and the renovation of existing*  
5        *school buildings in a manner that will create a healthy environment for students*  
6        *and teachers while saving energy, resources, and operational expenses; and*  
7        *(2) Encourage the use of a life-cycle cost, holistic approach to building design that*  
8        *considers school design, construction, operation, and maintenance in the initial*  
9        *decision-making process.*

10       ➔ SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO  
11 READ AS FOLLOWS:

12       *(1) As used in this section:*

13       *(a) "Life-cycle cost analysis" means to calculate and compare different*  
14       *building designs to identify which is the best investment over the long term.*  
15       *Life-cycle costs include design and construction costs, operating costs,*  
16       *maintenance costs, and repair and replacement costs, adjusted for the time*  
17       *value of money;*

18       *(b) "Net zero building" means a building in which the amount of energy*  
19       *provided by on-site renewable energy sources is equal to the amount of*  
20       *energy used by the building; and*

21       *(c) "Efficient school design" means a school building design:*

- 22       *1. That meets, at a minimum, the requirements of the United States*  
23       *Green Building Council's Leadership in Energy and Environmental*  
24       *Design (LEED) for schools at the "Certified" level or certification*  
25       *under a comparable system with equivalent requirements or other*

1 building performance certification systems, such as the United States  
 2 Department of Energy's Energy Star program;

3 2. That ensures energy savings from a building design that equates to or  
 4 exceeds ten (10) percent over the American Society of Heating,  
 5 Refrigerating, and Air Conditioning Engineers energy standard 90.1-  
 6 2007; and

7 3. For which whole building life-cycle cost analysis illustrates that the  
 8 design is cost-effective.

9 (2) The General Assembly hereby finds that schools that are constructed or  
 10 renovated using efficient school design are proven effective vehicles for  
 11 accomplishing some or all of the following beneficial public purposes:

12 (a) Lower operating costs and increased asset value;

13 (b) Reduced waste sent to landfills;

14 (c) Conservation of energy and water;

15 (d) Reduced storm drainage runoff;

16 (e) Healthier, safer environments for occupants;

17 (f) Reduced emissions of greenhouse gases; and

18 (g) Improved student attendance and performance by:

19 1. Using the building as a teaching tool;

20 2. Using the local environment as a context for curriculum integration;

21 3. Providing rigorous, highly relevant, and applied learning; and

22 4. Improving productivity by making buildings healthier for occupants,  
 23 especially through the increased use of natural light.

24 (3) The Kentucky Department of Education and all school districts undertaking the  
 25 construction of new school buildings or the major renovation of existing school  
 26 buildings are strongly encouraged to:

27 (a) Meet or exceed efficient school design standards in planning and designing

- 1       all new buildings and major renovation projects;
- 2       **(b) Use life-cycle cost analysis to evaluate different design proposals; and**
- 3       **(c) Consider the possibility that each new school building or major renovation**
- 4       **of a building could be a net zero building, either during the construction or**
- 5       **renovation, or at a later date as resources become available.**
- 6       **(4) (a) The Kentucky efficient school design trust fund is hereby created as a**
- 7       **restricted account to be administered by the Department of Education.**
- 8       **(b) The account may receive contributions, gifts, donations, appropriations,**
- 9       **and any other moneys made available for the account. Notwithstanding**
- 10       **KRS 45.229, any moneys remaining in the account at the close of a fiscal**
- 11       **year shall not lapse, but shall be carried forward into the succeeding fiscal**
- 12       **year to be used for the purposes set forth in this section. Interest on moneys**
- 13       **in the account shall accrue to the account.**
- 14       **(c) Moneys in the account shall be used to offset the initial additional cost, if**
- 15       **any, associated with the construction or renovation of school buildings**
- 16       **using efficient school design.**
- 17       **(d) The Kentucky Board of Education shall promulgate administrative**
- 18       **regulations pursuant to KRS Chapter 13A to prescribe how a local school**
- 19       **district may qualify for and use funds from the account created by this**
- 20       **subsection.**
- 21       **(5) The Department of Education shall develop and adopt guidelines for efficient**
- 22       **school design, net zero buildings, and life-cycle cost analysis, including the**
- 23       **identification of appropriate computer-based simulation programs for use in**
- 24       **undertaking life-cycle cost analysis.**
- 25       **(6) The Department of Education and Department for Energy Development and**
- 26       **Independence shall assist school districts in:**
- 27       **(a) Developing methods for measuring ongoing operating savings resulting**

1 from the use of efficient school design;

2 (b) Identifying sources for training for school staff and students to ensure that  
 3 efficient school design features and components are fully utilized; and

4 (c) Identifying ways that efficient school design and its energy-saving  
 5 components can be integrated into the school curriculum.

6 (7) The Department of Education and Department for Energy Development and  
 7 Independence shall, by November 1, 2010, and each year thereafter, for the fiscal  
 8 year ending on June 30 of that year, prepare a report that shall be submitted to  
 9 the Legislative Research Commission and the Governor. The report shall address  
 10 new school buildings or building renovations and shall include but not be limited  
 11 to the following:

12 (a) An assessment of the implementation of efficient school design within  
 13 Kentucky's education system;

14 (b) Documented energy savings from any buildings built using efficient school  
 15 design or net zero school buildings in operation;

16 (c) A list of the new or renovated school buildings completed or identified for  
 17 future construction during the prior year using efficient school design,  
 18 including the name of the school district, name of the school, total project  
 19 cost, additional cost or savings, if any, associated with efficient school  
 20 design features, and efficient school design features included in the project;

21 (d) A list of all school buildings that operate as a net zero building, and school  
 22 buildings which school districts plan to convert to net zero. The list shall  
 23 include the name of the school district, the name of the school, the total cost  
 24 associated with the school building becoming a net zero building, and the  
 25 components that will be installed to make the building a net zero building;

26 (e) Any recommendations relating to efficient school design; and

27 (f) A list of new school buildings completed during the prior year without using

*efficient school design and an explanation of why efficient school design  
was not used.*

→Section 3. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.
- (2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.
- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any

1 purpose other than compensation for unused sick leave at the time of retirement and  
2 shall not be considered as part of the general fund balance in determining available  
3 local revenue for purposes of KRS 157.620.

4 (4) (a) The per pupil capital outlay allotment for each district from the public school  
5 fund and from local sources shall be kept in a separate account and may be  
6 used by the district only for capital outlay projects approved by the  
7 commissioner of education in accordance with requirements of law, and based  
8 on a survey made in accordance with administrative regulations of the  
9 Kentucky Board of Education. These funds shall be used for the following  
10 capital outlay purposes:

- 11 1. For direct payment of construction costs;
- 12 2. For debt service on voted and funding bonds;
- 13 3. For payment or lease-rental agreements under which the board  
14 eventually will acquire ownership of a school plant;
- 15 4. For the retirement of any deficit resulting from overexpenditure for  
16 capital construction, if such deficit resulted from an emergency declared  
17 by the Kentucky Board of Education under KRS 160.550; and
- 18 5. As a reserve fund for the above-named purposes, to be carried forward  
19 in ensuing budgets.

20 (b) A district may submit a request to the commissioner of education to use funds  
21 from the per pupil capital outlay allotment to purchase land for a new school  
22 or to modify an existing school if the project is included on the district facility  
23 plan for completion within eight (8) years. The land shall not be included in  
24 the calculation of the school district's unmet need. The commissioner may  
25 grant or deny the district's request at his or her discretion.

26 (c) A district which has experienced an increase in adjusted average daily  
27 attendance, as defined by administrative regulation, of twenty percent (20%)

1 or more over a five (5) year period may submit a request to the commissioner  
2 of education to use capital outlay funds for the operation of a new school for  
3 the first two (2) years following its opening. The commissioner may grant or  
4 deny the district's request at his or her discretion.

5 (d) A local school district may submit a request to the commissioner of education  
6 to use capital outlay funds for maintenance expenditures or for the purchase of  
7 property insurance without forfeiting the district's participation in the School  
8 Facilities Construction Commission program. Maintenance requests may  
9 include other priorities that are not considered major renovations, such as  
10 repair, renovation, or system upgrades that are necessary to maintain the  
11 integrity of an existing school facility.

12 (5) The district may contribute capital outlay funds for energy conservation measures  
13 under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and  
14 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall  
15 be based on the following:

- 16 (a) The energy conservation measures shall include facility alteration;  
17 (b) The energy conservation measures shall be identified in the district's approved  
18 facility plan;  
19 (c) The current facility systems are consuming excess maintenance and operating  
20 costs;  
21 (d) The savings generated by the energy conservation measures are guaranteed;  
22 (e) The capital outlay funds contributed to the energy conservation measures shall  
23 be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall  
24 be subject to the restrictions on usage as specified in KRS 45A.352(9); and  
25 (f) The equipment that is replaced shall have exceeded its useful life as  
26 determined by a life-cycle cost analysis.

27 (6) If any district has a special levy for capital outlay or debt service that is equal to the



capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the commissioner of education under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds, except when the current expenditures are approved by the commissioner of education under subsection (4)(b) or (c) of this section.

(7) If a survey shows that a school district has no capital outlay needs as shown in subsection (4)(a)1., 2., 3., and 4. of this section, upon approval of the commissioner of education, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.

(8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

(a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.

(b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be

1           used.

2           (c) "Transitional center" means a center which the local board of education has  
3           determined shall no longer be designated permanent or functional. The center  
4           shall be destined to be closed and shall not be eligible for new construction,  
5           additions, or major renovation. However, the board of education shall  
6           maintain any operating transitional center to provide a safe and healthy  
7           environment for students.

8           (9) **Beginning in fiscal year 2011-2012, the Kentucky Department of Education shall**  
9           **standardize the process for evaluating the overall quality and condition of all**  
10          **school buildings across the state. The evaluation process shall:**

11          **(a) Result in consistent categorization of buildings for local planning purposes**  
12          **and for the distribution of state general fund moneys designated for capital**  
13          **construction;**

14          **(b) Be based on measurable, objective criteria;**

15          **(c) Include numerical scoring with weights to recognize building components**  
16          **and characteristics that address:**

17           **1. Life safety issues;**

18           **2. Compliance with state and federal codes;**

19           **3. Compliance with requirements under the Americans with Disabilities**  
20           **Act;**

21           **4. Community spaces;**

22           **5. Instructional areas;**

23           **6. Mechanical, electrical, plumbing, and other technology systems;**

24           **7. Site and exterior building conditions;**

25           **8. Age of the buildings;**

26           **9. Feasibility of building additions or major renovations;**

27           **10. The districts' facility capacities;**

1 11. Current use of temporary facilities; and

2 12. Projected enrollment growth; and

3 (d) Use of a third-party evaluator that utilizes an already established software  
 4 based system to perform the first, base-line evaluation.


5 (10) The Kentucky Board of Education shall promulgate an administrative regulation  
 6 upon recommendation of the Kentucky Department of Education and the School  
 7 Facilities Construction Commission to implement subsection (9) of this section.

8 (11) If a local school board authorized elementary, middle, or secondary education  
 9 classes in a facility of a historical settlement school on January 1, 1994, the board  
 10 shall continue to use the facilities provided by the settlement school if the facilities  
 11 meet health and safety standards for education facilities as required by  
 12 administrative regulations. The local school board and the governing body of the  
 13 settlement school shall enter into a cooperative agreement that delineates the role,  
 14 responsibilities, and financial obligations for each party.

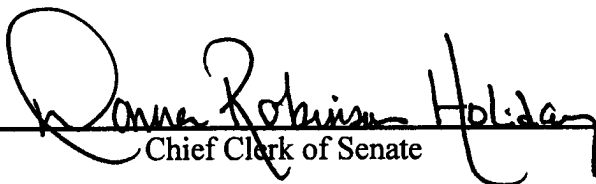
15 (12) [(10)] Notwithstanding the provisions of subsections (4) and (6) of this section, a  
 16 local district that has requested a mid-year adjustment in the support education  
 17 excellence in Kentucky funding under KRS 157.360(15) may request permission  
 18 from the commissioner of education to use capital outlay funds for the purchase of  
 19 school buses or to use the capital outlay funds for increased operational expenses  
 20 for the first three (3) years following the increased growth in the district without  
 21 forfeiture of the district's participation in the School Facilities Construction  
 22 Commission Program. The commissioner may grant or deny the district's request.

23 ➔Section 4. By June 1, 2011, the Department of Education shall determine the  
 24 estimated amount of money that local school districts are expending for architect and  
 25 engineering evaluations in preparation of the existing district facility plans and report that  
 26 amount to the Interim Joint Committee on Education and the Interim Joint Committee on  
 27 Appropriations and Revenue.

1        ➔Section 5. By January 15, 2011, the Kentucky Department of Education with  
2        advice from the School Facilities Construction Commission shall issue a Request for  
3        Proposal for contracting with a third party for conducting statewide evaluations required  
4        by subsection (9) of Section 3 of this Act.

  
\_\_\_\_\_  
President of Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date April 13, 2010